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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,657	10/17/2003	John V. Marlow	T8465812US1	9797

7590 06/15/2005

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CANADA

EXAMINER

ASHLEY, BOYER DOLINGER

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SA

<b>Office Action Summary</b>	<b>Application No.</b> 10/686,657	<b>Applicant(s)</b> MARLOW ET AL.	
	<b>Examiner</b> Boyer D. Ashley	<b>Art Unit</b> 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 9,11-13,15 and 17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9,11-13,15 and 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/17/03</u> . | 6) <input type="checkbox"/> Other: _____  |

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## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/27/04 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 9, 11-13, 15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stemmler, U.S. Patent 5,022,295, in view of Kalwaites, U.S. Patent 3,881,381 and Larsen et al., U.S. Patent 5,948,566.

Stemmler discloses the invention substantially as claimed including, e.g.,: a cutting roll (2) and an opposing anvil roll (3); a means for journaling the rolls (16,18,19); a conveying means (column 3, lines 45-50, inherent); and a heating means (cartridges 56/57) for the blades, cutting roll, and anvil roll (column 3, lines 5-20) mounted within the rolls (column 5, lines 5-20). Stemmler discloses heating the entire punching device to the temperature required by the workpiece; but is silent as the specific temperature

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range. Stemmler also lacks an index mechanism for facilitating movement of the workpiece.

Kalwaites, however, discloses that it is old and well known in the art to use similar workpieces as Stemmler with conveying elements and heated forming rolls as well as a specific temperature between 160 to 300 degrees Celsius, more specifically 280 to 425 degrees Fahrenheit depending upon the specific workpiece for the purpose of facilitating movement of the workpiece between the forming rolls as well as facilitating forming of the film. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use a workpiece conveyor and specific temperature of 160 to 300 degrees Celsius depending upon the type of workpiece being used with the device of Stemmler. Larsen et al. discloses that it is old and well known in the art to use index rings in conjunction with conveyors depending upon the type of workpiece for the purpose of facilitating movement of the workpiece through the cutting rollers wherein the workpiece is no longer in contact with the conveyor. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use an indexing mechanism in order to ensure that the workpiece is conveyed through the cutting rolls.

It should be noted that the recitations to the specific workpiece do not serve to distinguish the claimed invention from the prior art of record. In apparatus claims, the work piece is not given any patentable weight, because it has been held that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the

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claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In this case, the modified device of Stemmler is fully capable of being used with unpapered freshly pasted expanded, punched or cast lead or lead alloy mesh strip whether or not the device would function perfectly or not.

4. Claims 9, 11-13, 15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Larsen et al., U.S. Patent 5,948,566, in view of Stemmler, U.S. Patent 5,022,295, and Kalwaites, U.S. Patent 3,881,381.

Larsen et al. discloses the invention substantially as claimed except for, e.g., cutting roll (76) and an opposing anvil roll (below 76); a means for journaling the rolls (inherent); a conveying means (60); and a heating means (see columns 7 and 8, lines 55-65 and 1-6); and an indexing mechanism (see column 7, lines 65-57). Larsen et al. discloses heating but is silent as the specific temperature range. However, Stemmler disclose the use of heating the entire punching device to the temperature required by the workpiece; but is silent as the specific temperature range.

Kalwaites, however, discloses that it is old and well known in the art to use cutting devices with conveying elements and heated forming rolls as well as a specific temperature between 160 to 300 degrees Celsius, more specifically 280 to 425 degrees Fahrenheit depending upon the specific workpiece for the purpose of facilitating movement of the workpiece between the forming rolls as well as facilitating forming of the film. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to use a workpiece conveyor and specific temperature

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of 160 to 300 degrees Celsius depending upon the type of workpiece being used with the device of Larsen et al

It should be noted that the recitations to the specific workpiece do not serve to distinguish the claimed invention from the prior art of record. In apparatus claims, the work piece is not given any patentable weight, because it has been held that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In this case, the modified device of Stemmler is fully capable of being used with unpapered freshly pasted expanded, punched or cast lead or lead alloy mesh strip whether or not the device would function perfectly or not.

### ***Response to Arguments***

5. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Applicant contends that heating the device of Stemmler to the required temperatures herein would destroy the workpiece in Stemmler. However, it should be noted that the device of Stemmler discloses that it is old and well know to heat all elements of the device. Stemmler is clearly useable with other types of workpieces as taught by Kalwaites with the specific temperatures. One of ordinary skill in the art would readily recognize the need to head every element of the cutting portions to higher temperatures based upon the type of workpiece.

6. For the reasons above, the grounds of rejection are deemed proper.

**Conclusion**

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

8. For the reasons above, the grounds of rejection are deemed proper.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Boyer D. Ashley whose telephone number is 571-272-4502. The examiner can normally be reached on Monday-Thursday 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 571-272-4514. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Boyer D. Ashley  
Primary Examiner  
Art Unit 3724

BDA  
June 13, 2005